

ola 74-0706

15 April 1974

STATINTL

MEMORANDUM FOR:



SUBJECT : S. 2543 - Amendment to the Freedom of Information Act

1. A suggested response to the Department of Justice invitation concerning S. 2543, which is the leading Senate bill to amend the Freedom of Information Act, is attached herewith. We were asked to comment by noon today and we have been attempting to alert the Justice people that we will get our reply down tomorrow, but we have been unable to get through by telephone today. Three points for particular consideration:

a. I wonder if there is a valid distinction to be drawn between the review of documents withheld pursuant to an executive order decision and those withheld pursuant to a statutory decision.

b. This proposal and our earlier communications with Justice and other departments concerning this bill stress our reliance on the 102(d)(3) proviso as an Exemption 3 statute. This reliance may or may not be warranted and my own view is that it is not.

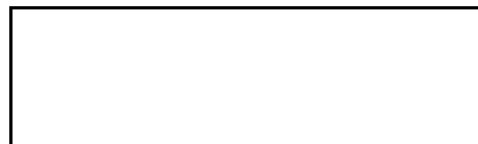
c. A suggested change in the Justice amendment in the area of in camera inspection, which deletes the several references to "classified" documents, comes from



I think it is a valid point.

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2. It is hard to guess just what the time, pressures, and opportunities for Justice are. My suggestion is that we send this or a similar letter right away. If we want to make additional changes in the next few days, I'm sure we could do so.



Associate General Counsel

STATINTL

Approved For Release 2007/02/07 : CIA-RDP75B00380R000600190059-6
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Mr. Robert L. Saloschin
Office of Legislative Counsel
Department of Justice
Washington, D. C. 20530

Dear Mr. Saloschin:

CIA is in general agreement with the groupings you have made with respect to the need for changes in S. 2543. We also believe the amendments you suggest are significant improvements.

There is one provision both in the bill and in your revision, namely, the references to the name of the individual who denies or directs the denial of a request, which would be particularly difficult for CIA. In many instances, the Agency employee having substantive knowledge and responsibility and who would make the decision is an employee who is under cover and whose career contemplates assignments abroad. For that employee to be identified publicly as a CIA employee would seriously lessen his value. To meet this problem, we suggest that the period at the end of the sentence of line 2 on page 7 be deleted and the following added:

" , provided however, that neither this sentence nor subparagraph (d)(3) shall override or negate section 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g.)."

This provision of the CIA Act exempts the Agency from the provisions of any law which require disclosure of titles, names or functions of Agency employees.

We believe your proposal to improve the provisions concerning the strict time limits which the bill would establish is a vast step forward. Even so, it seems likely that the departments, or any of them, might have great difficulties in administering the Act in this amended form.

It seems quite conceivable that one or more requesters, for responsible or harassment purposes, could tie up the executive branch, or specific departments, with numerous requests for quantities of documents. Having said that, I nevertheless would defer to your judgment, particularly your feelings as to what is possible.

Further with respect to the time limits, I suppose the initial determination by departments is apt to be more time consuming than is the appeal determination. If a compromise is necessary in order to obtain a relaxation of a 15-day limit to 20 days, it might be better to reverse the changes you have suggested; that is, on page 6, line 1, change "15 days" to "20 days" and on line 9, change "15 days" to "10 days."


Our major concern continues to be with the in camera inspection provision and the first exemption. We have seen nothing to indicate the reason for the Committee's desire to modify Exemption 1 by adding the word "statute" to that exemption, nor are we certain as to the effect of such amendment. One apparent effect of significance to CIA ^{may be} ~~is~~ that it removes from Exemption 3 the two statutes under which CIA operates and places them in Exemption 1. If there is a difference in the scope or manner of review as between the Exemption 1 and Exemption 3 statutes, the ironical result of this amendment apparently would be that departmental exemption decisions concerning defense and foreign policy statutes are to be subject to greater and more far-reaching review than are decisions arising under exemption statutes in other areas, and this notwithstanding the President's constitutional authority and responsibility in the former areas.

As to the Justice proposal concerning in camera inspection itself, we would request a revision to exclude from in camera inspection records withheld pursuant to statute. As we indicated in our letter of 11 April, we should think the intention to respond to the Mink invitation concerning documents classified pursuant to Executive order would not be negated by such a change. The language suggested in our letter of 11 April, or similar language, would be appropriate for this purpose. It should be noted that the suggested language refers also to statutes not primarily of concern to this Agency, but which are in the national defense and intelligence areas.

Also the Justice language to improve this feature, namely, your proposed item (ii) which would be added between lines 21 and 22 on page 3, is directed to the treatment of "classified" documents. As you know, documents are classified only pursuant to the Executive Order and it is highly possible that this Agency would find it necessary to withhold an unclassified document because it would reveal intelligence

sources and methods and no doubt other departments, operating under other statutes, might have a similar concern. To meet this point, we would delete the word "classified" from the fourth line of the Justice proposed paragraph, "(ii)" and from the third from the last line on the next Justice page (page 2). Additionally, on the first page of the Justice proposal, we would delete the words "the classification of such document" and substitute the words "that the decision to withhold such document". On the last line of that page we would delete the word "classification" and substitute the word "decision". On the first line of the Justice page 2 we would delete the word "classification" and substitute the words "decision to withhold".

Sincerely,



Associate General Counsel

STATINTL

on Star-News **Action Page**

SUNDAY, APRIL 14, 1974

Freedom of Information

Both the media and citizens have an important stake in a Senate bill that comes to grips with the no-fault government and the bureaucratic arrogance and government secrecy it breeds in Washington.

It is S. 2543, which, by tightening up the Freedom of Information Act (FOIA) of 1966 and making that law more usable by Americans, has brought down the concerted wrath of the federal bureaucracy.

THE JUSTICE Department has assigned more lobbying resources to block the bill when it comes up before the Senate Judiciary Committee later this month. Other agencies are alerting all hands to stop S. 2543 before these agencies are afflicted with accountability to those citizens whom they have denied information all these years.

What S. 2543 does is to spot the ways that agencies have gotten around the Freedom of Information law and try to give people the rights and remedies to fight back successfully.

Since bureaucracies have a strong aversion to being accountable to the citizens they are supposed to serve, the chief object of their ire is the section in the bill which authorizes the courts to impose the sanction of suspension without pay up to 60 days for any agency



Ralph Nader

officials who the courts find are withholding information "without a reasonable basis in law."

THERE IS ample reason for this mild sanction. Again and again citizens have been unlawfully denied critical information dealing with health, safety or expenditure of taxpayers' funds.

Agency officials know they can only be stopped on a case-by-case basis, assuming the person has the funds to find a lawyer and win in court. Even when the person wins the case, as was true regarding meat inspection reports and nursing home surveys, other people requesting these reports have been rebuffed by such lawless agencies.

Putting the responsibility squarely on the individual in the agency who violates the FOIA ends the cynical or cavalier attitude of government officials that they can do so with impunity.

Fifteen state FOIA laws carry criminal penalties for

state officials who violate them. But the federal FOIA has no penalties at all; it is a toothless law that heavily burdens the public's right to know

Other sections of S. 2543 would set deadlines for an agency to respond to a citizen's request for information and to respond to a citizen's lawsuit. Contrived delays to wear down the persons requesting such data or reports is a favorite technique of preserving secrecy.

When Carl Stern of NBC finally won his law suit to obtain documents about citizen harassment from the Justice Department, he could look back on 26 months of effort before he won. Few people can endure such delays and fewer can sustain the legal costs. Stern had one of our attorneys represent him on a pro bono basis.

THE SENATE bill also goes after the "contagion device." This is the agency excuse which tells people they can't have any of the

information requested because a part of it is legitimately confidential. If the bill passes, the agencies will have to delete such a part and release the rest of the material.

In addition to filling several other loopholes, S. 2543 gives the courts authority to award attorney's fees and litigation costs whenever citizens seeking the information prevail in court.

For example, if a newspaper or magazine sues to obtain information from an agency or department, the court can assess the costs of the suit against the government.

At the hearings on the bill, chaired by Sen. Edward Kennedy, media representatives said that one of the reasons they had not sued the FOIA more was the expense of litigation. Imagine how much more prohibitively expensive lawsuits could be for ordinary people who believe information is the currency of democracy.

SENATORS will welcome hearing from their folks back home about S. 2543 before they have to decide how they are going to vote. For a free booklet on how to use the Freedom of Information Act, send an addressed envelope to Freedom of Information Clearing House, P.O. Box 19367, Washington, D.C. 20036.